

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BRUSSELS

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E.O. 11652: GDS

TAGS: ESTC, BE, CU

SUBJ: STRATEGIC TRADE CONTROLS: INTERNATIONAL MACHINERY
CORPORATION

REF: BRUSSELS 3090, 4332, 4365; STATE 92629

1. DEPARTMENT APPRECIATES EMBASSY'S REPORTS ON THE
INTEREST OF FMC CORPORATION'S BELGIAN SUBSIDIARY
INTERNATIONAL MACHINERY CORPORATION (IMC) IN SELLING
EQUIPMENT TO FIRMS IN SWEDEN, NORWAY, AND ITALY FOR
INCORPORATION IN PACKAGE ORDERS FOR EXPORT TO CUBA. AN
FMC VICE-PRESIDENT (MCLELLAN) HAD COMMUNICATED EARLIER
TO WASHINGTON AGENCIES IMC'S DESIRE TO EXPORT MILK
PROCESSING EQUIPMENT TO SWEDEN FOR USE IN A MILK PLANT
TO BE INSTALLED IN CUBA. WASHINGTON AGENCIES SOUGHT TO
DISCOURAGE FMC FROM PARTICIPATING IN THIS BUSINESS IN
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VIEW OF U.S. POLICY OPPOSING TRADE WITH CUBA DIRECTLY OR
INDIRECTLY BY AMERICAN COMPANIES AND THEIR SUBSIDIARIES
ABROAD.

2. RE PARA 3 BRUSSELS 4365, THERE HAS BEEN NO RELAXATION

OF U.S. SANCTIONS AGAINST CUBA, INCLUDING RESTRICTIONS
ON EXPORTS OF FOOD. THE PRESIDENT'S MOST RECENT STATEMENT

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ON CUBA IS CONTAINED IN HIS REPORT TO THE CONGRESS OF
MAY 3, 1973, ON U.S. FOREIGN POLICY FOR THE 1970'S. THE
RELEVANT STATEMENT APPEARS ON PAGE 778 OF DEPT OF STATE
BULLLETIN 1771 DATED JUNE 4, 1973.

3. THE DEPT IS AWARE OF THE CUBAN GOVERNMENT'S INTEREST
IN EXPANDING TRADE WITH COUNTRIES OF WESTERN EUROPE
AND IN OBTAINING ADDITIONAL FINANCIAL CREDITS. THE
RESPONSIVENESS OF THE BELGIAN GOVT TO CUBAN OVERTURES
HAS BEEN PLAINLY CLEAR (BRUSSELS 37), AS DEMONSTRATED BY
BELGIUM'S DISREGARD OF OUR VIEWS CONCERNING THE SALE OF
WEAPONS SPARE PARTS TO CUBA IN 1972. BELGIUM'S
ASSISTANCE TO CUBA (BRUSSELS 4332), DESPITE THE REQUEST
FOR COOPERATION IN ISOLATING CUBA MADE TO FRIENDLY
COUNTRIES OUTSIDE THE HEMISPHERE BY THE AMERICAN STATES
AT THE TWELFTH MEETING OF CONSULTATION OF MINISTERS OF
FOREIGN AFFAIRS IN 1967, FURTHER INDICATED BELGIAN
DISREGARD OF OUR VIEWS.

4. DEPT IS PUZZLED BY FONOFF'S APPARENTLY STRONG INTEREST
IN THE LEVEL OF BELGIAN EXPORTS TO CUBA WHICH IN 1972 WERE
ONLY \$9 MILLION OUT OF TOTAL BELGIAN EXPORTS OF \$16
BILLION. GOB MUST RECOGNIZE THE OPPORTUNITY FOR
EXPANSION OF EXPORTS TO CUBA IS LIMITED BY CUBA'S
DIFFICULTY IN SERVICING ADDITIONAL FOREIGN DEBT IN VIEW
OF ITS REGULAR LARGE DEFICITS IN ITS ANNUAL BALANCE OF
PAYMENTS (\$600 MILLION IN 1972).

5. DEPT SEES NO SIGNS THAT THE GOVT OF CUBA IS
DISSATISFIED WITH ITS RELATIONSHIP WITH THE SOVIET UNION
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OR THAT FURTHER INCREASES IN TRADE WITH AND CREDITS FROM
THE WESTERN EUROPEAN COUNTRIES WOULD PROVIDE AN ALTERNA-
TIVE TO RELIANCE ON THE USSR. INDEED, CUBA'S RELATIONS
WITH THE SOVIET UNION HAVE BECOME CLOSER IN THE PAST
SEVERAL YEARS, EVEN AT A TIME WHEN CUBA'S TRADE (AND
CREDITS) WITH WESTERN COUNTRIES HAVE INCREASED. SOVIET-
CUBAN RELATIONS HAVE NEVER BEEN WARMER.

6. A REVIEW OF U.S. POLICY AND REGULATIONS CONCERNING
TRANSACTIONS BY AMERICAN SUBSIDIARIES OVERSEAS WITH CUBA
MAY BE HELPFUL TO THE EMBASSY.

A. CUBAN ASSETS CONTROL REGULATIONS (31 CFR 515) PROHIBIT
PERSONS SUBJECT TO U.S. JURISDICTION FROM ENGAGING IN
UNLICENSED TRANSACTIONS, EITHER DIRECT OR INDIRECT, WITH

CUBA OR CUBAN NATIONALS. CACR DOES CONTAIN GENERAL LICENSE PROVISION (515.541) PERMITTING FOREIGN SUBSIDIARIES OF U.S. CORPORATIONS TO ENGAGE IN TRANSACTIONS WITH CUBA, BUT GENERAL LICENSE DOES NOT EXTEND TO U.S. CITIZENS WHO ARE OFFICERS OR DIRECTORS OF SUCH SUBSIDIARIES. SUCH CITIZENS REQUIRE A LICENSE FROM TREASURY PERMITTING THE SPECIFIC TRANSACTIONS WITH CUBA; WITHOUT IT THEY ARE OBLIGED TO ACTIVELY OPPOSE SUCH TRANSACTIONS.

B. AS GENERAL RULE, GRANTING OF A LICENSE IN SPECIAL CASES IS NOT CONSISTENT WITH EQUITABLE APPLICATION OF CACR TO U.S. CITIZEN-CONTROLLED SUBSIDIARIES IN THE MANY COUNTRIES WHERE THEY ARE LOCATED. WHERE A U.S. SUBSIDIARY BELIEVES THAT SPECIAL COMPELLING FACTORS ARE PRESENT

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CONCERNING A SPECIFIC TRANSACTION THAT WOULD INVOLVE DIRECT OR INDIRECT TRADE WITH CUBA IT MAY ASK ITS PARENT COMPANY TO SUBMIT A REQUEST FOR A LICENSE UNDER CUBAN ASSETS CONTROL REGULATIONS TO OFFICE FOREIGN ASSETS CONTROL, TREASURY DEPT, SETTING FORTH ALL FACTORS THAT WOULD FACILITATE EVALUATION OF SPECIAL CIRCUMSTANCES THAT MAY BE PRESENT.

C. EMBASSY COMMENTS WILL BE HELPFUL TO DEPARTMENT IN PROPERLY ADVISING TREASURY ON ANY FUTURE LICENSE APPLICATIONS. IN EACH CASE DEPARTMENT PROBABLY WILL SEEK EMBASSY VIEWS ON (1) BELGIAN LAWS THAT WOULD BE VIOLATED BY AMERICAN SUBSIDIARY IF IT COMPLIES WITH U.S. REGULATIONS AND REFUSES TO ENTER INTO CUBA-RELATED TRANSACTIONS; (2) RISKS OF RETALIATION BY GOB AGAINST COMPANY OR OTHER U.S. INTERESTS IF TRANSACTION DECLINED AND REASON BECOMES KNOWN; (3) IMPACT SUCH DENIAL, BASED ON EXTRATERRITORIAL APPLICATION OF U.S. LAWS OR REGULATIONS IN BELGIUM, WOULD HAVE ON GENERAL U.S. FOREIGN POLICY OBJECTIVES IN BELGIUM; (4) WHETHER DECISION ON TRANSACTION IS ONE NORMALLY MADE IN BELGIUM BY SUBSIDIARY OFFICERS OR DIRECTORS AND, IF SO, WHETHER U.S. CITIZENS CONTROL BOARD OF DIRECTORS.

7. AMERICAN COMPANIES HAVE GIVEN USG FULL COOPERATION IN PREVENTING THEIR FOREIGN SUBSIDIARIES FROM TRADING WITH CUBA. THIS COOPERATION HAS EXTENDED BEYOND THE LETTER OF LAWS AND REGULATIONS AND HAS BEEN APPLIED TO

SUBSIDIARIES IN COUNTRIES WHICH HAVE DIPLOMATIC RELATIONS WITH CUBA, SUCH AS MEXICO, PERU, CHILE, CANADA, UK, AND JAPAN. ACCORDINGLY, U.S. SUBSIDIARIES IN BELGIUM SHOULD BE ENCOURAGED TO AVOID TRANSACTIONS WITH CUBA RATHER THAN SEEK TO EXPLORE THE LIMITS OF U.S. REGULATIONS. IN SPECIAL CASES WHERE THEY FEEL THEY WOULD BE SERIOUSLY PREJUDICED BEFORE THE HOST GOVERNMENT BY REFUSING TO

PARTICIPATE IN A TRANSACTION DIRECTLY OR INDIRECTLY INVOLVING CUBA, THEY SHOULD PRESENT THEIR CASE TO THE PARENT U.S. COMPANY SO THAT IT MAY BE GIVEN FULL CONSIDERATION BY INTERESTED WASHINGTON AGENCIES.

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8. EMBASSY SHOULD INFORM BASSOMPIERRE THAT U.S. LAWS AND REGULATIONS OBVIOUSLY DO NOT APPLY TO BELGIAN CORPORATIONS CARRYING ON BUSINESS OUTSIDE THE U.S. THESE LAWS AND REGULATIONS ONLY APPLY TO U.S. PERSONS AND COMPANIES, AND REQUIRE THEM TO BE LICENSED TO DO BUSINESS WITH CUBA DIRECTLY, INDIRECTLY BY EXPORTS VIA THIRD COUNTRIES, OR THROUGH FOREIGN CORPORATIONS WHICH THEY CONTROL THROUGH THE PRESENCE OF U.S. CORPORATE OFFICERS OR DIRECTORS. SHOULD A CONTRADICTION APPEAR TO BE DEVELOPING IN THE APPLICATION OF U.S. AND FOREIGN LAWS OR REGULATIONS IN THE SAME CASE, IT IS UP TO THE U.S. COMPANY TO BRING THIS TO OUR ATTENTION AND, IF IT SO WISHES, TO APPLY FOR A LICENSE WHICH WOULD SERVE TO RESOLVE THE CONFLICT. FYI THE FMC COMPANY HAS, HOWEVER, NOT TAKEN STEPS TO FILE A LICENSE APPLICATION, AND WE ARE NOT IN A POSITION TO ACT IN THIS MATTER WITHOUT A LICENSE APPLICATION BEFORE THE TREASURY. END FYI. ROGERS

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